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INQUIRY CONCERNING DENIAL OF CONTRACTS TO LOW OFFEROR FOR ARMY --ETC(U)
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UNCLASSIFIED GAO/PLRD-81-66

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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

PROCUREMENT, LOGISTICS,
AND READINESS DIVISION

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SEPTEMBER 18, 1981

The Honorable Jim Sasser
United States Senate

The Honorable James H. Quillen
House of Representatives

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Subject: Inquiry Concerning Denial of Contracts to Low
Offeror for Army Translation Services.
(PLRD-81-66)

This report is in reply to your joint letter of January 29, 1981, in which you provided us with a series of articles published in a Tennessee newspaper--the Kingsport Times-News--in early January 1981. These articles questioned the Army's bidding practices in awarding purchase orders for language translation services. You asked us to investigate allegations regarding whether

- your constituent's low bids for translation work were regularly passed over;
- your constituent was denied contracts without explanation; and
- there was any evidence of fraud, conflict of interest, deception, or improper circumvention of Army procurement regulations.

We met with contracting officials in the Defense Supply Service-Washington at the Pentagon. We also met with officials in the Army Intelligence and Threat Analysis Center; the Defense Intelligence Agency; and the Office of the Inspector General, Army Intelligence and Security Command, in the Washington, D.C., metropolitan area. We reviewed available records to determine the validity of the allegations. We discussed the results of our review with these officials and considered their comments in preparing this report. We did not assess the overall operations at any of the above agencies.

We also met with the author of the articles, Mr. Gary Meyer, and your constituent, Mr. Samuel D. Blalock, Jr., to obtain their views and any documentation that would support the allegations.

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Details of our review are provided as the enclosure. Briefly, we found that procurement regulations relative to obtaining competition were not followed in awarding purchase orders for translation services. Instead, orders were issued on the basis of rates quoted in basic ordering agreements but not necessarily to the contractor offering the lowest rate. Your constituent was not solicited or considered for award of translation services, even though the rate listed in his basic ordering agreement was the lowest of all the rates included in the contractors' basic ordering agreements. We found no evidence that the contracting agency provided your constituent an explanation for this action. We also found no evidence of fraud, conflict of interest, or deception.

We are recommending that the Secretary of Defense ensure that the Defense Supply Service-Washington follow established procurement regulations in awarding orders for translation services and develop a set of standard operating procedures that will state clearly and concisely the managerial responsibilities and duties of contracting officers and technical representatives in contracting for translation services.

Your Office requested that we restrict release of this report for 2 days, after which it will be released to interested committees, subcommittees, Members of Congress, and agency officials. Copies will also be available to other interested parties upon request.

Donald J. Horan

Donald J. Horan
Director

Enclosure

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INQUIRY CONCERNING DENIAL OF CONTRACTSTO LOW OFFEROR FOR ARMY TRANSLATION SERVICESBACKGROUND

In 1974, Mr. Samuel D. Blalock, Jr., terminated his employment with the Defense Intelligence Agency (DIA) and became a freelance translator in Kingsport, Tennessee. At about that time, he obtained a basic ordering agreement (BOA) for translation services from the Defense Supply Service, the contracting office for both DIA and the Army Threat and Analysis Intelligence Center.

The Defense Supply Service arranges for contracted services for about 180 customers and awards about \$300 million in contracts annually. The amount of awards for translation services alone has grown in recent years, as shown in the following table:

	<u>Fiscal years</u>			
	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>
DIA	\$ 47,000	\$130,000	\$150,000	\$180,000
Army Intelligence Center	<u>228,400</u>	<u>144,000</u>	<u>150,000</u>	<u>165,000</u>
Total	<u>\$275,400</u>	<u>\$274,000</u>	<u>\$300,000</u>	<u>\$345,000</u>

As used by the Defense Supply Service, a BOA is a document indicating a contractor's willingness to provide a service or product at a quoted rate. According to the Defense Acquisition Regulation, a BOA is not considered to be a contract. The regulation also states that BOAs shall not in any manner provide for, or imply, any agreement on the part of the Government to place future orders or contracts with the contractors involved, nor shall they be used in any manner to restrict competition. Individual purchase orders issued against a BOA by the Government are considered to be contracts.

The Defense Supply Service will provide a BOA form to any contractor desiring to provide translation services. The contractor, in turn, completes the form and returns it to the Service. The completed BOA is valid for 1 year. In completing the BOA, each contractor is required to quote a rate at which it might be willing to perform translation work, usually expressed in terms of a fixed charge for each 1,000 words to be translated. Mr. Blalock received his first BOA from the Defense Supply Service in early 1975 and his last one in fiscal year 1979. His fiscal year 1979 BOA shows that he was charging \$18 per 1,000

words for translations from Russian to English compared to 19 other contractors that held BOAs whose charges ranged from \$20 to \$60 per 1,000 words.

ALLEGATION REGARDING NONACCEPTANCE OF
LOW OFFER FOR TRANSLATION SERVICES

Mr. Blalock alleged that since 1975 his offers to perform translation work were regularly passed over by the Army Intelligence Center in favor of other contractors offering such services at higher rates.

The contracting officer at the Defense Supply Service was responsible for approving orders for translation services for both DIA and the Army Intelligence Center. We found that the contracting officer issued orders for these agencies on the basis of rates quoted in the BOAs. However, in the case of the Army Intelligence Center, the contracting officer issued orders to contractors even though their rates were higher than the rate quoted in Mr. Blalock's BOA. We also found that the procedures followed in approving the orders did not conform to the requirements of the Defense Acquisition Regulation. These orders were approved without soliciting price quotations at the time the contracts were placed and there was no evidence in the file to justify the failure to obtain price quotations.

The Defense Acquisition Regulation states that a BOA shall not be used in any manner to restrict competition. It further states that services may be ordered under a BOA only if it is determined at the time the order is placed that it is impractical to obtain competition by either formal advertising or negotiation. Thus, for services involving a number of potential suppliers, such as translation services, the contracting officer is required to solicit offers from a number of sources before issuing orders. Under simplified small purchase procedures, which would apply for the translation services we reviewed, the solicitation could consist of obtaining three telephone offers from potential suppliers. If offers are not solicited, the contracting officer is to provide an explanation of the failure to do so.

The procedures being used by the Defense Supply Service differ significantly from these requirements. After receiving a completed BOA, the contracting officer sends a copy to the technical representatives at both DIA and the Army Intelligence Center. Subsequently, when requests for translation work arise, the technical representative recommends one of the contractors holding a BOA for performance of the work and prepares a justification for the recommended selection on a

separate document. Then the representative prepares an order and sends it to the Defense Supply Service's contracting officer, along with the justification for the recommended selection. The contracting officer is responsible for reviewing and signing the order and then issuing it to the contractor. The order identifies the document and language to be translated, the estimated price, and the date the completed translation is to be submitted to the technical representative.

We reviewed 27 copies of orders to perform Russian translation services for the Army Intelligence Center issued during July 27, 1978, through July 26, 1979. We found no evidence that the contracting officer solicited offers from potential suppliers at the time the orders were placed or any evidence as to the reasons for not soliciting such offers as required by the Defense Acquisition Regulation.

Defense Supply Service officials informed us that they rely heavily on DIA and Army technical representatives to recommend contractors to perform translation work because they have the expertise in the translation area. They also informed us that they believed that technical representatives recommended contractors having the lowest rates in their BOAs and that, where the lowest rate was not recommended, the justifications prepared by the technical representatives provided the rationale.

We reviewed the justifications for the 27 orders prepared by the Army technical representative. We found that these justifications did not adequately support awards to other than the contractor with the lowest rate, although the contracting officer approved and issued the related orders to the contractors recommended by the technical representative. In 1 case, the justification was missing, and in 18 cases, the selection was made on the basis that the selected contractor had previous or considerable experience with the work to be translated and was available to do the work. The justification did not cite the reasons for not using a contractor, including Mr. Blalock, with a lower rate. In the remaining eight cases, the justifications stated that an alternate contractor was selected because the contractor and the first alternate contractor generally used for such work were both involved with other translation projects. However, no mention was made of the contractors with lower rates than those selected.

Seven of the 27 orders covered translations of the Air Defense Herald, a Soviet monthly publication, which was the work the Army technical representative previously assigned to Mr. Blalock. In two of the seven orders covering fiscal year 1978, the Army technical representative stated that Mr. Blalock was engaged in translating a previous issue of the Air Defense Herald and

that the other contractors were immediately available. Both orders were approved by the contracting officer even though contractors with higher rates were to be used. In one case, a contractor was to receive \$2,940 for his work compared to the \$2,300 Mr. Blalock would have earned on the basis of the price stated in his BOA. In the other case, a contractor was to be paid \$4,920 versus the \$3,690 Mr. Blalock would have earned.

In five of the seven orders covering fiscal year 1979, the Army technical representative assigned the work to three higher priced contractors in the aggregate amounts of \$3,750, \$5,000, \$1,925, \$2,430, and \$1,760 compared to Mr. Blalock's prices of \$2,700, \$3,600, \$1,260, \$1,620, and \$1,152. The contracting officer approved these orders, even though the justifications failed to mention why Mr. Blalock and other contractors with lower rates than those selected were not available to perform the work.

In a January 9, 1981, memorandum to the Army technical representative, Defense Supply Service officials authorized the Army technical representative to represent the contracting officer in placing orders against BOAs for translation services. A similar memorandum, however, was not sent to the DIA technical representative. The memorandum stated that when the total amount of an order exceeded \$500, the available contractor with the lowest unit price was to receive the job. When the aggregate amount was \$500 or less, the jobs were to be equitably distributed among available contractors.

The January 9 memorandum did not cite the procurement regulations that should be followed nor did it provide guidance to the Army technical representative on how he should determine a contractor's ability to perform or what action should be taken when a contractor's work does not meet quality or timeliness standards. We believe such guidance should be given to both the Army and DIA technical representatives and should

- cite the procurement regulations that apply to BOAs and small simplified purchase procedures,
- provide for coordination between the two technical representatives to determine the anticipated contractor's current workload and for communication with the contractor to determine his/her ability to take on added work,
- provide for immediate communication with the contracting officer where timeliness or quality problems arise, and

--indicate the types of records to be maintained to support the actions of each technical representative.

ALLEGATION REGARDING DENIAL OF
CONTRACTS WITHOUT EXPLANATION

Mr. Blalock alleged that he performed translation services contracts with the Defense Supply Service regularly until 1978 when the Army technical representative denied him further contracts without explanation.

As indicated previously, the procedures followed in approving orders by the Defense Supply Service contracting officer did not conform to the requirements of the Defense Acquisition Regulation. Instead, the contracting officer issued orders on the basis of recommendations by the technical representatives as to the contractor to be selected. We found that the work assigned to Mr. Blalock was limited to translating the Air Defense Herald from 1975 to June 1978. Subsequently, the technical representative did not recommend any work for Mr. Blalock and the contracting officer did not issue any orders to Mr. Blalock, even though Mr. Blalock's BOA included rates lower than those included in other contractors' BOAs.

We found no evidence that the contracting officer questioned the technical representative's failure to recommend work for Mr. Blalock. Instead, the contracting officer approved orders to other contractors at rates higher than the rate at which Mr. Blalock indicated a willingness to perform and the justifications prepared by the Army technical representative to select other than the contractor with lowest rate were, in our view, inadequate. Except for these justifications, we found no explanation on the part of the Army technical representative as to the reason for not recommending work for Mr. Blalock until July 3, 1979, about a year after the last work assignment, when the technical representative wrote a memorandum to the Defense Supply Service.

In that memorandum the Army technical representative stated that:

"* * * Mr. Blalock's current availability is undoubtedly due to the fact that such clients as ITAC [Army Intelligence and Threat Analysis Center] Translation Section, DIA and Nuclear Regulatory Commission are no longer assigning him work. That non-assignment of work is the consequence of Mr. Blalock's performance over the past year or so, i.e., exceedingly slow delivery; nondelivery (in the case of DIA); pedestrian and turgid style of translation, among other things * * *."

ENCLOSURE

ENCLOSURE

The memorandum indicated that Mr. Blalock's delivery of the last four issues of the Air Defense Herald was inordinately slow. The November 1977, January 1978, April 1978, and May 1978 issues were delivered 6, 12, 7, and 10 months, respectively, after assignment.

Agency officials provided us with the assignment, order, and delivery dates for the last two issues but could not locate the same information for the first two issues. We found that the order covering the April 1978 Air Defense Herald was dated July 21, 1978, and showed the work was to be delivered to the Army technical representative by January 5, 1979. The Army technical representative's records showed that this issue was assigned to Mr. Blalock on May 4, 1978, and was delivered on December 18, 1978. Similarly, the order covering the May 1978 Air Defense Herald was dated January 30, 1979, and showed the work was to be delivered by August 31, 1979. The Army technical representative's records showed that this issue was assigned to Mr. Blalock on June 14, 1978, and was delivered in April 1979. Therefore, while there was a lapse of 7 and 10 months from assignment dates to actual delivery dates for these two issues, there was only a lapse of 5 and 3 months from the order dates to the actual delivery dates. More importantly, for these two issues, Mr. Blalock's delivery was made in accordance with contract requirements.

The Army technical representative stated in the July 3 memorandum that, theoretically, with such turnaround times, the translation should be highly polished and readable which had not been the case with Mr. Blalock's products. He added that Mr. Blalock's frequent word-for-word translation from the Russian violated the BOA's specification of using clear and idiomatic English. He also pointed out that only one of Mr. Blalock's last three translations contained a translation of the table of contents.

The Army technical representative concluded by saying that it did not seem advisable then, or in the future, to resume assigning translation projects to Mr. Blalock. He said Mr. Blalock's unprofessionalism was probably beyond remedy, his excessive delivery time of late could very well be repeated, and his habit of turning to his Congressman whenever the Army Finance Office was slow in making payment could again consume staffhours in the Defense Supply Service and in his office whose time could better be devoted to other matters.

During our review, we met with the DIA technical representative to obtain any documentation that could corroborate the statements of the Army technical representative and to obtain her views on Mr. Blalock's work.

The DIA technical representative stated that she had been satisfied with Mr. Blalock's translation work up until May 1978, when she had noticed a gradual slippage in his delivery dates. At that time, Mr. Blalock was supposed to have completed translating some Swedish and French documents into English, but DIA had never received the translations. Further, the DIA technical representative had never received a translation of a German document that she had sent to Mr. Blalock in July 1978 but did receive a translation of a Russian document in October 1978 that was to have been completed in July 1978.

On December 26, 1978, the DIA technical representative officially notified Mr. Blalock in writing that, because of his failure to complete the assignments in the timeframe prescribed, she was canceling the orders to translate the French, German, and Swedish material previously sent to him. At the same time, the contracting officer sent Mr. Blalock amended orders that showed the three orders to translate the above material were being canceled.

The DIA technical representative stated that she was not aware, until either late 1980 or early 1981, that Mr. Blalock had his fiscal year 1979 BOA renewed in October 1978, and that Defense Supply Service officials had not advised her of this fact. These officials could not explain why the DIA technical representative had not received a copy of Mr. Blalock's 1979 BOA. They stated that in the normal course of business, a copy of the BOA was distributed to DIA. The DIA technical representative explained that had she known Mr. Blalock held a BOA in 1979 she would have continued to provide him with Russian translation work only and would have monitored his progress closely to ensure he would be meeting delivery dates. Since we have met with Defense Supply Service officials to discuss our report, the DIA technical representative has further advised us that there were four other contractors that held valid fiscal year 1979 BOAs in which she had no knowledge.

After receiving the Army technical representative's July 3, 1979, memorandum, Defense Supply Service officials informed us that they elected not to advise Mr. Blalock of any shortcomings in his translation services or of their intention not to assign him additional Army work. As a result, Mr. Blalock was not given an opportunity to take any desired or corrective action to refute the allegations of the Army technical representative. Nor was he notified why he was not receiving further work, even though his rate was lower than all other rates submitted in BOAs. We believe that good management practices would have dictated that Mr. Blalock be given an opportunity to defend himself and told why he was not receiving more work. Such action might have permitted Mr. Blalock's allegations to be resolved to everyone's satisfaction and might have resulted in the Government obtaining lower prices for translation work.

ENCLOSURE

ENCLOSURE

ALLEGATION REGARDING FRAUD, CONFLICT OF
INTEREST, DECEPTION, OR IMPROPER CIRCUMVENTION
OF ARMY PROCUREMENT REGULATIONS

The reporter of the Kingsport Times-News who wrote a series of articles detailing Mr. Blalock's allegations stated that his investigation revealed instances of fraud, conflict of interest, deception, or improper circumvention of Army procurement regulations.

The evidence obtained during our review could not support the allegation that a conflict of interest existed between the Army technical representative and the contractors he was awarding translation contracts. Further, we did not find any evidence to support the allegation that Government officials were trying to deliberately deceive or evade the reporter of the Kingsport Times-News in his quest to obtain answers pertaining to Mr. Blalock's allegations. Earlier in our report, we addressed the allegation of improper circumvention of Army procurement regulations. Finally, while we found no indication that fraud was committed by any agency official, we believe the potential for fraud exists unless Defense Supply Service officials improve their management controls of contracting for translation services. In essence, they will have to devote more time and attention to supervising DIA's and the Army Intelligence Center's technical representatives.

CONCLUSIONS

In summary, we believe that procurement regulations relative to obtaining competition were not being followed in awarding orders for translation services. Instead, orders were issued on the basis of rates quoted in BOAs but not necessarily to the contractor offering the lowest rate. Mr. Blalock was not solicited or considered for award of translation services, even though the rate listed in his BOA was the lowest of all the contractors' rates submitted in BOAs. We found no evidence that the contracting agency provided Mr. Blalock an explanation for this action. We also found no evidence of fraud, conflict of interest, or deception.

RECOMMENDATION

We recommend that the Secretary of Defense ensure that the Defense Supply Service-Washington follow established procurement regulations in awarding orders for translation services and develop a set of standard operating procedures that will state clearly and concisely the managerial responsibilities and duties of contracting officers and technical representatives in contracting for translation services.

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